

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAURO GUMPAL,  
Plaintiff,  
v.

QUEEN OF THE VALLEY MEDICAL  
CENTER, et al.,  
Defendants.

Case No. [16-cv-06611-SI](#)

**ORDER OF DISMISSAL**

In this *pro se* prisoner's civil action, plaintiff complained that he had become infected with several illnesses due to the use of contaminated medical instruments at a Napa hospital. The court reviewed the complaint on March 10, 2017, and dismissed it with leave to amend. That order explained that the threshold issue was whether there was a claim that would give this court original jurisdiction over this action in which state law negligence and product liability claims predominate because, if there was no federal claim (such as a claim under 42 U.S.C. § 1983), the negligence and products liability claims had to be pursued in state court. (Docket No. 7 at 3.) The court concluded that the complaint failed to state a federal claim (such as a § 1983 claim for an Eighth Amendment violation based on deliberate indifference to a serious medical need), and set a deadline of April 28, 2017, for plaintiff to file an amended complaint. (Docket No. 7.) The court explained that "[f]ailure to file the amended complaint by the deadline will result in the dismissal of the action without prejudice to plaintiff pursuing his state law claims in state court." (*Id.* at 5.) Plaintiff did not file an amended complaint, and the deadline by which to do so has long passed. Accordingly, this action is **DISMISSED** for lack of subject matter jurisdiction because no federal claim has been stated.

1           This court never reached the viability of the state law claims because it never found a claim  
2       stated that would give this court original jurisdiction. Thus, this dismissal is without prejudice to  
3       plaintiff filing an action in state court asserting his state law claims. Plaintiff is cautioned that he  
4       must act diligently to file an action in state court if he wishes to present his claims there, because  
5       statutes of limitations set time limits on the filing of an action.

6           **IT IS SO ORDERED.**

7       Dated: June 26, 2017



SUSAN ILLSTON  
United States District Judge